

EN BANC

[G.R. No. 168446 (formerly G.R. Nos. 144174-75), September 18, 2009]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERNESTO CRUZ, JR. Y CONCEPCION AND REYNALDO AGUSTIN Y RAMOS, APPELLANTS.

DECISION

PERALTA, J.:

The present appeal is from a Decision^[1] dated April 8, 2005 of the Court of Appeals (CA) in CA-G.R. CR No. 00264, affirming in *toto* the Joint Decision^[2] dated May 25, 2000 of the Regional Trial Court (RTC), Branch 78, Malolos, Bulacan, finding appellants Ernesto Cruz, Jr. and Reynaldo Agustin guilty beyond reasonable doubt of the crimes of Kidnapping and Serious Illegal Detention (Article 267, Revised Penal Code [RPC] as amended by Republic Act [R.A.] No. 7659) and Robbery (Article 294, RPC, as amended by R.A. No. 7659).

The antecedent facts, as culled from the records, are the following:

On August 23, 1998, on or about 6:30 in the evening, Atty. Danilo Soriano, a Legal Officer of Del Monte Philippines, had just ended his usual Sunday visit to his farm in Masuso, Pandi, Bulacan.^[3] Wanting to go home to his residence in Malabon, Metro Manila, Atty. Soriano requested his caretaker, appellant Reynaldo Agustin, to have the latter's son drive the former in a motorcycle to the jeepney stop, so that he could board a jeepney going to the Pandi-Balagtas terminal. Appellant Agustin volunteered to take Atty. Soriano to his destination using the former's motorbike, to which Atty. Soriano accepted.^[4] It was raining then and barely 30 to 50 meters away from the jeepney stop, appellant Agustin stopped his motorbike beside a parked stainless owner-type jeep.^[5] Three men were inside the said vehicle, while another one was standing beside it. Appellant Agustin spoke with the men and said, "*Ano ba? Si Attorney!*" After which, appellant Agustin told Atty. Soriano to board the said jeep. Atty. Soriano boarded after appellant Agustin told him that one of the men inside the jeep, appellant Ernesto Cruz, Jr., was his *compadre* and they were all bound for Balagtas, Bulacan. Thereafter, appellant Agustin left them.^[6]

While the vehicle was on the road, appellant Cruz put his left arm around the neck of Atty. Soriano, poked a gun at the latter and announced a hold-up. Narciso Buluran (now deceased), held Atty. Soriano's hands, while accused Totchie Kulot grabbed Atty. Soriano's eyeglasses and used his umbrella to shield them from approaching vehicles. The men then got Atty. Soriano's bag and took his wristwatch, P2,500.00 cash, Totes umbrella worth P880.00, pager worth P3,000.00, a Swiss knife worth P1,500.00 and tools worth P1,500.00, totaling P12,000.00.^[7] Then they brought Atty. Soriano to a dimly-lighted hut, but was later transferred to another

hut. Atty. Soriano remained there for a week, closely guarded by Narciso Buluran, who was armed with an armalite rifle, and Tochie Kulot, who was armed with a revolver. Appellant Cruz visited him most of the time, while accused Allen Francisco prepared the food.^[8]

A day after the abduction, or on a Monday, appellant Cruz demanded ransom from Atty. Soriano; otherwise, they would kill the latter. Atty. Soriano was allowed to write two letters^[9] to his wife Iluminada (Luming) and a note^[10] on which he was told to write as follows:

OFFER OF COMPROMISE

1. P100,000 cash payable today
2. US \$20,000, telegraphic transfer to PNB-Makati Ave. payable upon credit to local account or by express delivery to me or representative.

(Sgd. Illegible)
8-25-98

The letters were eventually sent to his wife, while appellant Cruz kept the short note in his wallet.^[11] Appellant Cruz also called the victim's family from the cellular phone using the telephone number found on Soriano's diary.^[12] That Friday or on August 28th, appellant Cruz arrived in the hut late in the evening appearing to be drunk and told Atty. Soriano that the ransom money had been raised and that the latter would be released the following day.^[13]

That Saturday, August 29th, at 11:30 a.m., appellant Cruz went with accused Enrique Avendaño to the agreed place of pay-off at I. S. Pavilion, a mall located at Meycauayan, Bulacan, to collect the ransom money from Atty. Soriano's daughter, Clarissa. After receiving the parcel containing the ransom money, appellant Cruz and Avendaño left on board a tricycle. Unknown to them, some Presidential Anti-Organized Crime Task Force (PAOCTF) operatives had been monitoring the pay-off and accosted appellant Cruz and accused Avendaño near the Meycauayan Public Market, while they were still carrying the parcel containing the ransom money and the Nokia cellular phone used to contact Atty. Soriano's family. The PAOCTF operatives were able to learn from appellant Cruz the whereabouts of Atty. Soriano.^[14]

Around 5:30 p.m. of the same day, the PAOCTF operatives and local *barangay* officials of Camachilihan, Bustos, Bulacan entered the premises of appellant Cruz's fishpond in Camachilihan, Bustos, Bulacan, where they heard a gunshot, prompting the team to return fire. They were able to rescue Atty. Soriano and in the process, killing Narciso Buluran. They arrested appellant Agustin and accused Francisco within the vicinity of the fishpond, while Tochie Kulot was able to escape. They were able to recover a gun, an icepick, an M-16 rifle, one (1) magazine, three (3) empty shells of M-16, two (2) shells of .45 caliber and one (1) wallet while searching the premises.^[15] Then PAOCTF Chief Superintendent (now Senator) Panfilo Lacson later

handed to Atty. Soriano a bag containing the ransom money recovered, consisting of 10 bundles of P1,000.00 bills.^[16]

As a consequence thereof, an Information^[17] dated September 22, 1998 was filed against Ernesto Cruz, Jr, Enrique Avendaño, Allen Francisco, Reynaldo Agustin, John Doe a.k.a. Tochie Kulot, and Richard Does charging them with the crime of Kidnapping and Serious Illegal Detention, as amended by R.A. 7659, which reads as follows:

Criminal Case No. 1489-M-98

That on or about 6:30 o'clock in the evening of August 23, 1998 at the intersection of Pasong Kalabaw and J. Bernardino Streets, Poblacion Pandi, Bulacan and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually aiding one another, did then and there wilfully, unlawfully and feloniously kidnap ATTY. DANILO SORIANO for the purpose of demanding ransom for the latter's release, and in fact, accused collected and received the ransom money in the amount of ONE MILLION (P1,000,000.00) PESOS, detaining and depriving Atty. Danilo Soriano of his personal liberty until his rescue by police officers on August 29, 1998.

CONTRARY TO LAW, particularly Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659.

Another Information^[18] was also filed against Ernesto Cruz, Jr., John Doe a.k.a. Tochie Kulot, and two unidentified men with violation of Article 294 of the Revised Penal Code, reading:

Criminal Case No. 1490-M-98

That on or about 6:30 o'clock in the evening of August 23, 1998 at the intersection of Pasong Kalabaw and J. Bernardino Streets, Poblacion, Pandi, Bulacan and within the jurisdiction of this Honorable Court, the said accused conspiring, confederating and mutually aiding one another, did then and there wilfully, unlawfully and feloniously, with intent to gain and by means of force, violence and intimidation and with the use of a firearm, robbed and took the following articles from Atty. Danilo Soriano, to wit:

1. Cash Money P2,500.00
2. Eyeglasses 1,500.00
3. Pager 3,000.00
4. 4. Casio calculator 800.00
5. Totes Umbrella 800.00
6. Imported Swiss knife 1,500.00
7. Folding pliers, screw driver
and other handy tools 2,000.00

8. Other personal belongings
of nominal value _____
P12,180.00

To the damage and prejudice of ATTY. DANILO SORIANO in the aforesaid amount.

CONTRARY TO LAW.

Upon arraignment^[19] on October 16, 1998, appellant Ernesto Cruz, appellant Reynaldo Agustin and Enrique Avendaño, assisted by counsel *de parte*, and Allen Francisco, assisted by counsel *de officio*, all pleaded Not Guilty of the crime/s charged.

After Pre-trial on November 12, 1998, trial on the merits ensued.

The prosecution presented as witnesses, Atty. Soriano, SMART Telecommunications Supervisor, Daisy Sazon, Senior Police Inspector (SPO)1 Ricardo Valencia, SPO4 Willy Nuas and SPO4 Romano Desumala whose testimonies were earlier mentioned.

On the other hand, the defense presented the testimonies of accused Allen Francisco, appellant Agustin, appellant Cruz, Lilibeth Francisco, Danilo Agustin, Isabelita Agustin and Bonifacio Moramion.

According to accused Allen Francisco, he was merely a helper and caretaker of the fishpond of appellant Cruz and knew nothing about the kidnapping.^[20] This was corroborated by his wife, Lilibeth, who stated that she prepared food for Atty. Soriano, a visitor who stayed in the hut from August 25 to 29, 1998, and wondered why the visitor was not allowed to leave the hut.^[21]

Appellant Agustin, the caretaker of Atty. Soriano's farm, testified that he only drove Atty. Soriano to the jeepney stop on August 23, 1998 as his son, Gerardo Agustin, met an accident earlier that day. When he and Atty. Soriano were already near the town, it began to rain and fearing that they would both get wet, and seeing appellant Cruz's jeepney parked at the intersection of Pasong Kalabaw and Bernardino Streets, appellant Agustin requested appellant Cruz to allow Atty. Soriano to ride with him to the town proper. At about 2 p.m. of the following day, Atty. Soriano's brother-in-law, Dan Roding, arrived at appellant Agustin's house and broke the news that Atty. Soriano failed to go home.^[22] Agustin then told Dan Roding that he had asked his friend, appellant Cruz to drive Atty. Soriano up to the Pandi-Balagtas terminal. Dan Roding then requested permission to go to appellant Cruz's house in Bagbagin, Pandi, Bulacan to inquire about the matter. He arrived there at 3:30 p.m.. Appellant Cruz told him that he had dropped Atty. Soriano off at the terminal. Appellant Agustin then went home and told Dan Roding, who was still there, about appellant Cruz's answer. On August 25, 1998, appellant Agustin and his wife went to Atty. Soriano's house in Malabon, where Dan Roding and his wife, Atty. Soriano's sister, Atty. Soriano's wife Luming, and daughter Clarissa were there crying. Luming told him that she had received a telephone call asking for money. Appellant Agustin told Clarissa, "*Huwag kang mag-alala, makakauwi din yon.*" They stayed in Atty. Soriano's house for two hours. Afterwards, he asked his son and wife

to call up the Sorianos and inquire after Atty. Soriano. When asked why he was at appellant Cruz's farm in Camachilihan, Bustos, Bulacan at the time of the arrest on August 29, appellant Agustin said that he was there to request appellant Cruz to catch fingerlings of hito for them.^[23]

However, accused Ernesto Cruz gave a version completely different from the earlier testimonies. He claimed that Atty. Soriano had staged the kidnapping. According to him, Atty. Soriano devised the kidnapping plan after the former's teasing remark of "*Atty., magpakidnap ka na lang,*" said during one of Atty. Soriano's frequent visits to appellant Cruz's nearby farm/fishpond. The said teasing remark was uttered after Atty. Soriano told appellant Cruz of the former's problems in dealing with bank installments for the on-going construction of his building in Santa Ana, Manila. Appellant Cruz added that Atty. Soriano set the kidnapping on August 23, 1998 at Pasong Kalabaw, Pandi, Bulacan for a ransom money of One Million Pesos (P1,000,000.00), as it was the only amount available in the family coffers. Finally, he said that Atty. Soriano promised them 10% of the ransom money.^[24]

On May 25, 2000, the RTC, rendered its Decision finding appellants Cruz and Agustin guilty beyond reasonable doubt of violation of Article 267 of the Revised Penal Code, as amended by R.A. No. 7659 and appellant Cruz of violation of Article 294 of the Revised Penal Code, as amended by R.A. No. 7659. However, Allen Francisco was acquitted of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, this Court hereby finds accused Ernesto Cruz, Jr. y Concepcion and Reynaldo Agustin y Ramos GUILTY beyond reasonable doubt of Violation of Article 267 of the Revised Penal Code, as amended by R.A. 7659, and hereby sentences them to suffer the penalty of DEATH and to pay private complainant Atty. Danilo Soriano the amount of P50,000 as moral damages.

Accused Allen Francisco y Buensaleda is hereby ACQUITTED of the charge.

This Court likewise finds accused Ernesto Cruz, Jr. y Concepcion GUILTY beyond reasonable doubt of Violation of Article 294 of the Revised Penal Code, as amended by R.A. 7659, and hereby sentences him to suffer the indeterminate penalty of 6 months of Arresto Mayor Maximum, as minimum, to 8 years of Prision Mayor Medium, as maximum, and to pay herein private complainant the amount of P12,000 as actual damages. With costs.

SO ORDERED.

The cases were appealed to this Court due to the imposition of the death penalty. However, on September, 14, 2004, in conformity with the decision promulgated on July 7, 2004 in G.R. Nos. 147678-87, entitled *The People of the Philippines v. Efren Mateo y Garcia*, modifying the pertinent provisions of the Revised Rules of Criminal Procedure, more particularly Sections 3 and of Rule 125 and any other rule insofar as they provide for direct appeals from the RTCs to this Court in cases where the